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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/580,007	05/26/2000	Richard Ornberg	MPI 8311	9935
26263	7590	07/06/2006		
SONNENSCHN NATH & ROSENTHAL LLP P.O. BOX 061080 WACKER DRIVE STATION, SEARS TOWER CHICAGO, IL 60606-1080			EXAMINER ISABELLA, DAVID J	
			ART UNIT 3738	PAPER NUMBER

DATE MAILED: 07/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 09/580,007	Applicant(s) ORNBERG ET AL.	
	Examiner DAVID J. ISABELLA	Art Unit 3738	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 4/7/2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3,9,10,18,26,52,55-57,64-196 and 200-224 is/are pending in the application.
- 4a) Of the above claim(s) 52,55-57,64-196 and 212-224 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3,9,10,18,26 and 200-211 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>4/7/06 / 4/17/06</u> | 6) <input type="checkbox"/> Other: _____ |

Status of the Claims

This application is a RCE filed on 2/10/2006. Claims 3, 9, 10, 18, 26, 52, 55-57, 64-196, and 200-215 are pending. Claims 3, 9, 10, 18, 26, 52 and 55-57 have been amended. Claims 1-2, 4-8, 11-17, 19-25, 27-51, 53-54, 58-63, 197-199 have been cancelled. Claims 200-215 are newly presented by this amendment. Of the pending claims, claims 52, 55-57, 64-196 and 212-224 are withdrawn.

Claims 63-196 were previously withdrawn as being drawn to a non-elected invention.

Newly submitted claims 52, 55-57, 212-224 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: the original claimed invention was directed to a species including a modified biomaterial having a non-proteinaceous catalyst bound to the surface of the biomaterial. Newly added claims 52, 55-57 and 212-224 are directed to modified de comprising non-proteinaceous catalyst and a biomaterial monomer. There is patentable distinction between a biomaterial which has been modified by bonding of a catalyst to the surface of the material from a composition comprising a catalyst and a monomer.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim*** withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 102

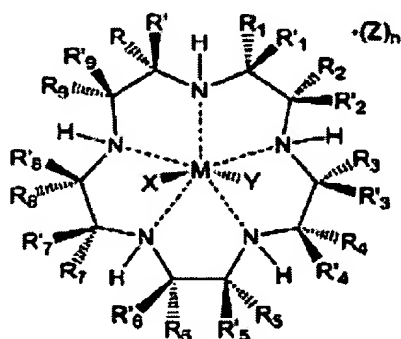
The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 3,9, 26,200-211 are rejected under 35 U.S.C. 102(e) as being anticipated by Riley et al [6084093].

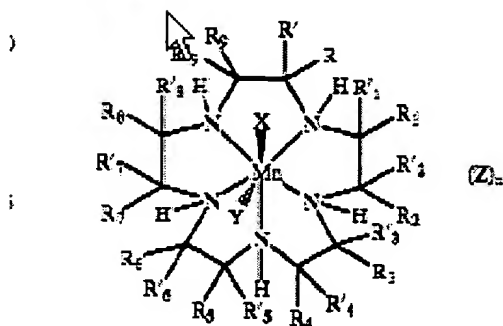
Riley et al discloses modified biomaterial Useful for the dismutation of superoxide comprising a biomaterial substantially compatible with a biological system and at least one non-proteinaceous catalyst for the dismutation of superoxide bound to the surface of the biomaterial, wherein the catalyst for the dismutation of superoxide is represented by the following formula:



Riley et al discloses the catalyst that is represented by the formula listed below.

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These complexes can be represented by the formula:



Column 29, lines 45+, Riley et al disclosed various ways the compound may be administered including carriers and patches. Applicant's specification establishes a listing of the various materials used as biomaterials including polymers set forth in claim 26 many of which are known to be used as biomaterials for transdermal patches.

The compounds of the present invention may be administered orally, parenterally, by inhalation spray, rectally, or topically in dosage unit formulations containing conventional nontoxic pharmaceutically acceptable carriers, adjuvants, and vehicles as desired. Topical administration may also involve the use of transdermal administration such as transdermal patches or iontophoresis devices. The term parenteral as used herein includes subcutaneous injections, intravenous, intramuscular, intrasternal injection, or infusion techniques.

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Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3,9,10,18,26,200-211 are rejected under 35 U.S.C. 103(a) as being unpatentable over Green et al [6939569] in view of Riley et al [6084093].

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Green et al teaches modifying various biomaterial to have oxidative activity, the oxidants can be superoxides, nitric oxides and/or hydroxyl radicals.

The anti-infective medical device of the invention produces an oxidant having anti-infective properties due to its oxidative activity. The anti-infective oxidant produced by the oxidant producing component has microbicidal and virucidal activity, and in one embodiment, spermicidal activity. Suitable anti-infective oxidants include elemental iodine, hydrogen peroxide, superoxide, nitric oxide, hydroxy radical, hypohalites, haloamines, thiocyanogen, and hypothiocyanite. The anti-infective oxidants are produced by the oxidation, reduction, or hydrolysis of the oxidant producing component.

Riley teaches that non-proteinacious catalyst for the dismutation of superoxide are useful as therapeutic agents for inflammatory disorders and oxidant induced tissue damages or injuries. To complex the catalyst of Riley et al to the various biomaterials to facilitate oxidative activity thereby reducing inflammatory response would have been obvious to one with ordinary skill in the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID J. ISABELLA whose telephone number is 571-272-4749. The examiner can normally be reached on MONDAY-FRIDAY.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, CORRINE MCDERMOTT can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



DAVID J ISABELLA
Primary Examiner
Art Unit 3738

DJI
6/24/2006